



House Committee To Look At New FISA Bill This Week

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While most of America's political attention was enthralled with President Donald Trump's scornful rebuke of former BFF Steve Bannon, House Republican leaders dropped a pretty heavy bomb in the war on freedom with the scheduling of a hearing and possible vote on a new FISA bill. The House Rules Committee is going to meet this week on the new FISA rules, which were slipped into a bill it has absolutely nothing to do with. It's pretty smart of House leadership to sneak the announcement out on a late Friday afternoon, but mass surveillance watchdogs still raised awareness on what was going on.

The rules would allow the National Security Agency to restart collecting messages Americans send to foreign intelligence targets barely a year after ending the practice. The bill is promising lip-service to the Fourth Amendment by saying "The Attorney General, in consultation with the Director of National Intelligence, shall adopt querying procedures consistent with the requirements of the fourth amendment to the Constitution of the United States for information collected pursuant to an authorization..." but CATO Institute policy analyst Patrick G. Eddington called the language complete make-believe.

"It's meaningless because the AG and DNI are allowed to make up the rules and decide what the phrase "consistent with" means vis a vis the 4th Amendment," the former CIA analyst told me. "If it isn't one person/one warrant/probable cause only standard, it's a sham."

The Fourth Amendment is the key part of the Constitution which proclaims the federal government cannot violate the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and warrants can't be issued without "probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The new rules do say the FISA court has to review the application for spying, but one thing which is extremely troublesome is the fact individuals don't find out their data is being seized because the government tends to go towards telecom giants for the data. This is very much unlike typical search warrants where law enforcement shows up at your home or business to go

through your possessions. Which should be troubling for any American who actually cares about their security, regardless if they've committed a crime or not.

It's not stopping supporters from going whole hog on hoping the bill will pass. Former George H.W. Bush Undersecretary of Defense Jed Babbin opined in *The Washington Times* last fall Congress needs to make FISA rules permanent.

"The benefits to our intelligence community would be immediate and substantial," Babbin swears. "A permanent FISA would stabilize those agencies' abilities to plan, budget for and run FISA operations more smoothly and with greater effect."

But Babbin's claim appears to be incorrect because the bill includes troubling language on the ability for the government to skip the judicial process.

Title I, Section 101 allows the FBI to skip a court order if someone, "determines there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm." And Section 102 for the AG's Office would allow prosecutors to use the evidence against someone in the United States, without it being, "subject to judicial review."

This could include American citizens.

"The courts and Congress have created national security carve-outs or exceptions like the one you referenced here." Eddington warned to me of the potential ghastly, and frightful, situation. "They should not exist, but they do... ***and yes, this could and probably would include US Persons/their data.***" (emphasis author's).

Even Babbin admits the FISA rules could be abused, by writing, "the courts have sustained the president's inherent constitutional power to do so which Congress cannot limit. It appears that the Obama administration abused both FISA and the president's inherent powers for political purposes."

His solution to prevent potential abuse is to make it a felony for anyone to use the information for political purposes. The problem is this still doesn't address the potential for innocent Americans or foreign nationals in the U.S. to see their information sucked into the government's databases for all time. For example, Swedish Hockey League's merchandise deal with Intersport does not allow shipping outside Sweden (unlike rugby or soccer, which have websites dedicated to the sale of team jerseys). It means a hockey fan in the United States has to go through someone in Sweden to get a T-shirt, sweater, hat, or scarf and would end up in a government database, if the person in Sweden is suspected of being involved in terrorism. This makes no sense.

This possibility isn't stopping Babbin from asserting it's all worth it, by using the example of the capture of Najibullah Zazi. He writes Zazi was captured after the NSA was able to use a message from an al Qaeda courier in Pakistan to track him down. The issue is a former UK intelligence official told *The Guardian* it was traditional police work which led them to Zazi, not the FISA warrant. We'll never know the answer because Zazi entered a guilty plea before going to trial.

There are also privacy worries about FISA data collection, given the inability of the American government to protect data of its own employees. There was a huge hullabaloo made over the OPM hack of 2014, and the posting of DHS and FBI employee information in 2016. Why should the government be trusted with FISA data, if they can't keep their own data under lock and key? It shouldn't, and politicians or advocates who say otherwise are either purposefully misleading the public, just don't care, or are using selective memory to get their point across.

Eddington gave this message in an email exchange with me for those who mewl Americans have nothing to worry about, if they aren't associated with terrorists or possible terrorists: It doesn't matter.

“(I)t only matters whether the government decides they've done something wrong, spies on them and then charges them with a crime they never committed.”

That should be a problem for everyone. The House Rules Committee meeting is Tuesday at 3 p.m. Eastern.